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Peter Gaal

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EXAMINER

ELCENKO, ERIC J

ART UNIT

PAPER NUMBER

2617

NOTIFICATION DATE

DELIVERY MODE

11/25/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Response to Arguments

1. Applicant's arguments have been fully considered but they are not persuasive. The applicant argues on page 10 and 11 of remarks the prior art of record does not teach assigning a second channel to a mobile station and the combination of Lindskog and Joshi do not teach this limitation in combination. In response to applicant's argument that Joshi teaching supplemental channels which are capable of a full rate, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Joshi teaches using multiple channels assigned to a single mobile station including up to seven additional supplemental channels. Therefore a dedicated channel and a supplemental channel can be assigned to a single mobile station. The applicant is focused on the channels being of a certain capability of rates. The supplemental channels are variable rate channels which include multiple rates aside from a full rate. Therefore it would be obvious to one of ordinary skill in the art that a variable rate channel would be capable of a rate as described in Lindskog without deviating or changing the operation of the channels in Joshi as they are capable of the rates discussed as being used by Lindskog. Therefore it is clear that the allocation of the supplemental channel is obvious given that a supplemental channel can be assigned to a mobile station which has a variable rate. (*Lindskog Para 24-28; Joshi Para 29-35*)

The sub-codes in the tree-structure of Fig. 2 are used as needed. If the supplemental channel is allocated then the code would be used if the rate was available in the code currently being used as shown in Fig. 2. Joshi does not teach away from using a rate different than a parent code as was outlined above in discussion of the combination of Joshi using a variable rate channel scheme which means a sub-code restricted to a lower-rate than the FCCH could be used to support the SCCHs.

In regard to Claim 42, the applicant's argument is similar to the argument as presented above regarding the combination of Joshi and Lindskog in regard to the *variable* rate supplemental channels. The applicant is making assumptions of the supplemental channels and their rates and not the teaching of the variable rate channels in regard to supporting a mobile station in the rate tree hierarchy as taught by Lindskog and shown in Fig. 2.

In regard to Claim 29, the applicant argues the limitation of a soft handoff being involved in the allocation of the codes. The applicant points to the specification paragraph 35 (*Examiner is reading this as paragraph 33 as that is the location of the quoted text in the remarks*) When a mobile station moves into a an overlap area where it will begin to communicate with the new cell's base station, the position is it would have been obvious to one of ordinary skill in the art that the base station that is newly communicating with the moving mobile station would allocate a new channel to the mobile station as it transition to the new cell.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC ELCENKO whose telephone number is (571)272-8066. The examiner can normally be reached on M-F 7:30 AM through 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Edouard can be reached on (571) 272-7603. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric Elcenko/